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A COMPARATIVE ANALYSIS ON THE SEDITION LAW REGIME IN INDIA AND THE UNITED STATES

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ABSTRACT

All legislative and executive activities in India must comply with the provisions of the Constitution because it is the country's supreme law. The most fundamental, inherent, and natural right that each man is endowed with from the moment of his birth is the right to free expression, which is protected by Article 19(1)(a). The most fundamental human right is therefore the freedom of speech and expression, whose restriction is a flagrant breach of human rights and cannot be permitted in any contemporary democratic government. Not always is the right to free speech guaranteed. By criminalising any kind of expression that incites hatred, contempt, or disaffection toward a legally created government in India, Section 124A of the Indian Penal Code, 1860 places restrictions on the right to freedom of speech and expression of the people. The punishment outlined in this section seems somewhat irrational considering that those found guilty under this part may get a life sentence. Its effectiveness in the contemporary democratic system is called into question as a result. There is constant discussion about the necessity and applicability of this clause in a democratic and independent India. There have been examples of the law of sedition being misused both before and after independence, which has raised major questions about whether such a legislation is necessary today. The First Amendment, on the other hand, guarantees the right to freedom of speech and expression in the USA, a country whose government is built on democratic principles. Despite having liberal and democratic beliefs, the US continues to have a sedition legislation, although the US Supreme Court has gradually limited its use over time. The Sedition Act, passed in 1798, established sedition as a criminal offence for the first time in the US. This paper, revolves around the effort to analyse the current sedition statute in light of Article 19(1)(a) and seeks to determine if such a law is necessary in the current Indian context by doing a comparative analysis of the sedition laws in the United States.

Key Words: Sedition, Constitution of India, Comparative Public Law, US Constitution.

INTRODUCTION:

The supreme law of India is found in its Constitution. It outlines the structure of the government, outlining the three branches' roles, responsibilities, and relationships with one

another²⁵⁰. In accordance with Part III of the Constitution, it also grants fundamental rights

²⁵⁰ Raghuvansh, S., Sedition Law in India, 4 JOURNAL OF LAW RESEARCH, INTERNATIONAL JOURNAL OF LAW AND LEGAL JURISPRUDENCE STUDIES, (2017) <http://ijlls.in/wp-content/uploads/2017/12/Essay.pdf>

to Indian nationals²⁵¹. Any law passed by the legislature must be in accordance with the requirements of the constitution; otherwise, it may be challenged in court and declared unconstitutional and void. The requirements of Articles 14, 19, and 21 must also be met for any bill that the legislature passes. These articles provide a number of extremely important rights that cannot in any manner be restricted by either the legislative or executive branches. As a result, the Indian judiciary is an autonomous body that protects citizens' fundamental rights and interprets the constitution²⁵². The citizens have a remedy against the State for the violation of their fundamental rights under Art. 32, 136 and 226. The Supreme Court and the High Courts are empowered to issue writs and any other order for the protection of fundamental rights of the citizen.

Further, the preamble of the constitution of India declares India to be a "sovereign socialist secular democratic republic..."²⁵³. According to Article 19(1), given that India is the largest democracy in the world, its inhabitants are granted a Directive of liberties as essential rights.

Art. 19(1) of the Constitution as follows:

"1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business."²⁵⁴

The most fundamental, natural, and inherent right that each and every person has as soon as they are born is the right to free speech and expression. As a social animal, man cannot survive as a human being without interacting with other people, and via speaking, man expresses himself and shares his ideas, thoughts, opinions, and viewpoints.²⁵⁵ The most fundamental human right is therefore the freedom of speech and expression, whose restriction is a flagrant breach of human rights and cannot be permitted in any contemporary democratic government. In order to determine if such a law is necessary in the current Indian context, the author of this essay attempts to analyse the current sedition statute in light of Article 19(1)(a).

RESEARCH QUESTIONS:

1. What constitutes sedition?
2. What is the expanse of the sedition law?
3. What are the constitutional backdrops of sedition law in India and the US?

RESEARCH OBJECTIVES:

1. To explore the nuances of sedition law.
2. To examine the historical trajectory of the sedition law India and the US.
3. To collocate the constitutional backdrops of sedition law in India and the US.

CHAPTER 2: THE JUDICIAL INTERPRETATION, HISTORY AND THE REASONABLE RESTRICTIONS CONCERNING FREEDOM OF SPEECH AND EXPRESSION IN INDIA:

In a free civil society, the freedom of speech and expression is seen as the most significant of all liberties and is of utmost importance. Article 19 of the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on

²⁵¹ Das, S., Saibabu, N., Indian Constitution: An Analysis of Fundamental Rights and the Directive Principles, 1 17

ARS- JOURNAL OF APPLIED RESEARCH AND SOCIAL SCIENCES (2014) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2592382

²⁵² Maneka Gandhi v. Union of India, 1978 AIR 597

²⁵³ Preamble of the Indian Constitution.

²⁵⁴ Article 19(1) Constitution of India.

²⁵⁵ Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore & Alternative Law Forum, Bangalore, Sedition Laws and The Death of Free Speech in India, ALTERNATIVE LAW FORUM (February 2011) https://www.nls.ac.in/resources/csscip/Files/SeditionLaws_coverFinal.pdf

Civil and Political Rights both recognise freedom of speech and expression as a fundamental human right. Being a signatory to the aforementioned agreements, India has made major efforts to safeguard the right of its citizens to free speech and expression, particularly through the Indian court. The scope of right freedom of speech and expression was explained by the SC in *Tata Press Ltd v. MTNL*²⁵⁶, where the apex court explained that this freedom includes all the incidental rights such as right to know, listen, receive and share information.

"Freedom of speech and expression is that cherished right on which our democracy rests and is meant for the expression of free opinions as to change political or social conditions or for the advancement of human knowledge... " Hidayatullah J²⁵⁷

The democratic form of administration places a strong emphasis on the active engagement of the populace. People in such a society not only enjoy the freedom of speech, but also the right to information about the government, current events, and all facets of the social, legal, and cultural affairs of the nation. In such a system, the people are the sole source of accountability for the government. Citizens who are informed and intelligent are better able to assess the policies and actions of the government and cast their votes during elections accordingly. Public opinion is given the utmost weight under a democratic society since the government is chosen by and serves the people. The Indian constitution guarantees the freedom of speech and expression as a fundamental right in light of this. In *Romesh Thappar v. State of Maharashtra*²⁵⁸, the Supreme Court declared a Madras government decision to be null and void, explaining that the right to free expression also encompasses the right to spread ideas, which is inextricably linked to the right to free movement.

In *Express Newspapers (Bombay) (P) Ltd. v. Union of India*²⁵⁹, the court held that:

"In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities."

Furthermore, the right to freedom of speech and expression is however not at absolute right in India and it can be restricted by the legislature on the grounds specified in Article 19 (2) which reads as follows:

"(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

Only on the grounds expressly listed in the constitution itself may freedom of speech and expression be lawfully curtailed. Any law restricting free expression for any reason other than those listed in Article 19(2) is outside the scope of the legislative authority of the Parliament and is subject to legal challenge as being unconstitutional and being overturned.

²⁵⁶ *Tata Press Ltd v. MTNL* (1995) 5 SCC 139

²⁵⁷ *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881.

²⁵⁸ AIR 1950 SC 124

²⁵⁹ 1986 AIR 872, 1985 SCR Supl.(3) 382

The Indian sedition law is defined under section 124A of the Indian Penal Code 1860 in the following words:

*"124A. Sedition. Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine"*²⁶⁰

The punishment outlined in this section seems somewhat irrational considering that those found guilty under this part may get a life sentence. Its effectiveness in the contemporary democratic system is called into question as a result. It is constantly contested whether this provision is necessary and relevant in independent, democratic India. There have been examples of the law of sedition being misused both before and after independence, which has raised major questions about whether such a legislation is necessary today. Not always is the right to free speech guaranteed. The language of the aforementioned section makes it clear that section 124A restricts people's freedom of speech and expression by making any form of expression that incites hatred, contempt, or disaffection toward an Indian government that has been duly established or even attempts to incite such emotions illegal.

Chapter 2.1: History of Sedition Law in India:

The first definition of sedition was included in section 113 of the Draft Penal Code of 1837, which was written by Macaulay. However, this item was not included in the Indian Penal Code when it was formally adopted in 1860. This omission was termed as a mistake and thereafter this mistake was rectified by the inclusion of section 124A in the IPC by passing the Act XVII of 1870²⁶¹

²⁶⁰ 124A, Indian Penal Code, 45 of 1860, 1860

²⁶¹ Law Commission of India, Consultation Paper on Sedition (August 30, 2018)

which was in tune with the British Treason Felony Act, 1848²⁶². Since rule was thus imposed on the Indian population by the British government. In UK, *Fitzgerald, J* explained the meaning of the term sedition in *R. v. Sullivan*²⁶³ observed:

*"Sedition in itself is a comprehensive term and it embraces all those practices 'whether by word, deed, or writing which are calculated to disturb the tranquillity of the State, and lead ignorant persons to endeavour to subvert the Government and the laws of the Empire. The objects of Sedition generally are to induce discontent and insurrection, and stir up opposition to the Government ... and the very tendency of sedition is to incite the people to insurrection or rebellion."*²⁶⁴

Chapter 2.2: Judicial Interpretation Over The Years:

The law of sedition was created in India during the British rule, as was already mentioned. The British government utilised and abused the law against the organisers and activists of the Indian freedom struggle. During the British era, many independence activists were detained and even tried on the charge of sedition since the British government sought to silence any Indian opposition to them. As a result, the motivation for drafting this law appears to be very evil since it made it convenient for the British administration to silence any opposition to British control. In reality, sedition-related charges led to the incarceration of M.K. Gandhi, the head of the Indian liberation struggle.

During the British era, the *Queen Empress v. Bal Gangadhar Tilak*²⁶⁵ case was one of the most well-known cases involving the law of sedition where the law of sedition was given a precise interpretation. It is completely irrelevant, according to Strachey, J., *"whether the accused person's deed resulted in a disturbance or*

²⁶² Treason Felony Act, 1848.

²⁶³ R. v. Sullivan 11 Cox. C.C. 44

²⁶⁴ PILLAI, K. N., SHABISTAN, A., ESSAY ON THE INDIAN PENAL CODE 283 (New Delhi: Indian Law Institute 2005)

²⁶⁵ I. L. R. (1897) 22 Bom. 112.

*genuine outbreak. Even if a rebellion may not have really broken out, the accused would still be held responsible under this provision if he attempted to "excite emotions against the government."*²⁶⁶

However, the court in *King-Emperor v. Sadasiv Narayan Bhalerao*²⁶⁷ overruled the above decision and upheld its decision given in the Tilak's case.

In *Ram Nandan v. State*²⁶⁸ The Hon'ble High Court found section 124-A to be extra vires after concluding that it placed restrictions on the right to free speech that were not in the public's best interests, whereas the same was overruled in the case of *Kedar Nath v. State of Bihar*²⁶⁹ wherein the court decided that while freedom of speech and expression should be fully safeguarded, some restrictions are required for the safety and integrity of the state. This was after reviewing the entire history of the Sedition Law. The court determined that only offences with the intent or propensity to incite public disorder and violence should be punishable under Section 124-A of the IPC. So, it was decided that Section 124-A was constitutional.

CHAPTER 3: SEDITION LAW IN THE UNITED STATES OF AMERICA:

In the United States of America, sedition is regarded as a serious offence that carries a 20-year prison sentence as well as a fine. It is seen as an act of encouraging violence or rebellion against the legitimate government of the United States with the intention of overthrowing it. A federal statute prohibiting seditious actions known as Title 18 of the United States Code deals with treason, insurrection, and other comparable offences. It states that the following actions constitute sedition:

- Conspiring to take, seize, or possess by force any property of the United States contrary to the authority thereof

- Opposing by force the authority of the United States government; preventing, hindering, or delaying by force the execution of any law of the United States
- Conspiring to overthrow or destroy by force the government of the United States or to declare war upon them.

In the United States, freedom of speech is highly valued, and the Constitution's first amendment protects it. Instead of simply advocating the use of force, the state must show that the defendant conspired to use force against legitimate authorities in order to convict them of sedition. The case of the Puerto Rican nationalists was one of the most significant sedition cases in the USA. *"Along with nine other conspirators, Pedro Albizu Campos planned to overthrow American rule and launch a bloody uprising to regain their freedom. He was sentenced to ten years in prison after being found guilty on the sedition charges. Although sedition is not a common offence in the United States and the sentence is severe compared to other nations"*²⁷⁰

The foundation of the American government is democracy. More than any other nation, it has actively promoted democratic norms and principles. It should go without saying that the freedom of speech and expression is of utmost importance in democracies. Citizens should have the right to free speech to voice their support or opposition to government acts for a government that is elected by the people and accountable to the people for all of its decisions. The First Amendment in the US protects the freedom of speech and expression. However, not all forms of expression are covered by the First Amendment, and it is not explicitly stated whether sedition is covered by it or not. The Sedition Act was once more passed by the US government in 1918 as a result of the unsettling worldwide political climate during World War I, and it was specifically utilised against those who supported Communist beliefs. The US Supreme Court maintained the legality of this Act by establishing the *"the clear*

²⁶⁶ Ibid.

²⁶⁷ AIR 1947 PC 84.

²⁶⁸ AIR 1959 ALL. 101

²⁶⁹ AIR 1962 SC 955

²⁷⁰ <https://www.findlaw.com/criminal/criminalcharges/sedition.html>

and present danger test” in *Schenck v. United States*²⁷¹, “according to which – words of such a nature and used in such circumstances as to create a clear and present danger that they will bring about the substantive evils which Congress has a right to prevent.”

CONCLUSION:

When it comes to the sedition law, one striking similarity between the US and India is that the crime has received extensive criticism and that both nations have contested the rule's continued inclusion in the statute book on several occasions. Despite several objections, sedition is still a criminal offence in both countries today. The supreme courts of both nations have made efforts to limit the definition of sedition and have prioritised the right to free expression in the cause of democracy. The sedition statute has withstood harsh criticism from a variety of public groups in both India and the United States. Despite the fact that both nations are among the largest democracies, the ancient law of sedition still exists in their penal codes. The law of sedition exists in part because of its troubled past. As it was in fact initially implemented in India by the British colonial administration to repress the Indian national movement and freedom fighters. In order to cope with spies and foreign opponents, a statute was also enacted in the United States in 1798. As a result, the law in both nations still serves the intended purpose and was created with good intent. However, given the current situation, the law must be changed to prevent any abuse by the ruling government. By rendering a number of decisions in favour of the right to freedom of speech and expression and by narrowing the application of the law of sedition, the judiciaries in both countries have managed to control and restrain the law. It has gotten to the point where the United States' legislation of sedition is hardly ever used. It is now necessary for India to either immediately repeal the law or alter the statute of sedition to reduce its reach as far as possible to prevent its

abuse. In terms of the applicability and extent of the sedition law in India, the verdicts rendered in the *Kedar Nath Singh*²⁷² case are of the utmost significance.

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²⁷¹ 249 U.S. 47 (1919).

²⁷² Supra Note 20.

[15] PILLAI, K. N., SHABISTAN, A., ESSAY ON THE INDIAN PENAL CODE 283 (New Delhi: Indian Law Institute 2005)

[16] I. L. R. (1897) 22 Bom. 112.

[17] Ibid.

[18] AIR 1947 PC 84.

[19] AIR 1959 ALL. 101

[20] AIR 1962 SC 955

[21]

<https://www.findlaw.com/criminal/criminalcharges/sedition.html>

[22] 249 U.S. 47 (1919).

